

EXHIBIT 1

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STATE OF ILLINOIS

IN THE CIRCUIT COURT FOR THE 19TH JUDICIAL CIRCUIT

LAKE COUNTY

THE PEOPLE OF THE STATE)
OF ILLINOIS,)
)
 Plaintiff,)
)
 vs.) NO. 93 CF 2081
)
HERMAN WILLIAMS,)
)
 Defendant.)

REPORT OF PROCEEDINGS of the hearing before
the HONORABLE MARK L. LEVITT on September 6, 2022.

APPEARANCES:

ERIC RINEHART,
Lake County State's Attorney,
for the People.

KEVIN MALIA,
Lake County Assistant State's Attorney,
for the People.

LAUREN KAESEBERG,
Attorney at Law,
with the Defendant.

VANESSA POTKIN,
Attorney at Law,
with the Defendant.

MAGGIE R. GILBERT
Official Court Reporter
IL License No. 084-004850

1 (Whereupon, the following
2 proceedings were held in open
3 court, commencing at 9:49 AM.)
4

5 THE COURT: This is 93 CF 2081, People vs.
6 Williams. Mr. Williams is present. He's in the
7 custody of the Illinois Department of Corrections.

8 Parties, please identify yourselves for the
9 record.

10 MR. MALIA: Judge, before we do, is the Zoom
11 working? We have --

12 THE COURT: Zoom is on.

13 MR. MALIA: Okay. It's just the victim's family
14 was going to Zoom in. They're out of state.

15 MS. KAESEBERG: The live Zoom --

16 MR. MALIA: We just wanted to confirm that.

17 THE COURT: Just so you know, if you need to
18 contact anybody, I have -- it does not look like
19 anybody outside of court personnel is present. So if
20 you need to contact somebody --

21 MS. KAESEBERG: Do you know, your Honor, if the
22 live stream is working, because --

23 THE COURT: I have no live stream.

24 MS. KAESEBERG: Oh, there is no live stream.

1 THE COURT: I admit everybody to Zoom. So if we
2 take -- you want to take a few minutes?

3 MR. MALIA: Could we?

4 THE COURT: Absolutely. Short recess.

5 (Recess taken.)

6 THE COURT: This is recalling People vs.
7 Williams.

8 Parties, please identify yourselves for the
9 record.

10 MR. MALIA: Judge, for the State, Kevin Malia
11 and Eric Rinehart. We are present in person.

12 MS. KAESEBERG: Good morning, your Honor.
13 Lauren Kaeseberg with the Illinois Innocence Project
14 with Mr. Herman Williams, who is present in court.

15 MS. POTKIN: And Vanessa Potkin with the
16 Innocence Project also for Mr. Williams.

17 THE COURT: Thank you very much. All right.

18 Parties sent in several stipulations for
19 purposes of today's proceeding. I have received
20 seven stipulations. Is that accurate?

21 MR. MALIA: That's -- yes, Judge.

22 THE COURT: So how do the parties wish to
23 proceed today, Mr. Malia?

24 MR. MALIA: Well, Judge, I think the Court

1 already put it on the record. But just to make
2 clear, this is up today on a hearing. The defendant
3 has filed a petition for relief of judgment and to
4 vacate conviction pursuant to 735 ILCS 5/2-1401.
5 This is a petition that ultimately the State is not
6 opposing under the circumstances. As your Honor
7 said, it is technically up for a hearing today. We
8 are asking to move forward with the hearing by way of
9 stipulations. We have seven stipulations to enter
10 into the record this morning.

11 THE COURT: Defense?

12 MS. KAESEBERG: We would agree with that, your
13 Honor, and we'd ask that the parties be permitted to
14 read the stipulations into the record. I know
15 there's some exhibits that we would enter as well.

16 THE COURT: You may.

17 As a procedural matter, State agrees that
18 the 2-1401 is timely filed?

19 MR. MALIA: Yes.

20 THE COURT: And by way of your representation to
21 me, you believe that you have no good-faith basis to
22 oppose it?

23 MR. MALIA: Correct.

24 THE COURT: And you fulfilled your duties

1 pursuant to statute in notifying the victims of these
2 proceedings and of all of the underlying facts?

3 MR. MALIA: Yes.

4 THE COURT: As you know them to be?

5 MR. MALIA: Yes. And, Judge, I would put on the
6 record I know the victim in this case is a woman by
7 the name of Penny Williams. Her sister and, I
8 believe, her mother as well as both of her kids are
9 present via Zoom. I certainly see her sister's
10 log-in on the Zoom. I believe she is physically with
11 Ms. Williams' mother.

12 For the record, I have also sent them a
13 copy of the petition that the defendant filed. I
14 know they've had a chance to review that. Since it's
15 been filed, we have stayed in pretty regular contact
16 with Ms. Daly and Ms. Williams' family.

17 THE COURT: Thank you very much.

18 MS. KAESEBERG: And, your Honor, if I may as
19 well? Mr. Williams and the victim in this case,
20 Penny Williams, had two children together, and both
21 of those children, Charlie and Crystal, are in
22 receipt of the Zoom information. We were texting
23 earlier, and I believe they're also on the Zoom
24 observing the hearing as well.

1 THE COURT: Very good.

2 Defense, you can proceed.

3 MR. MALIA: Judge, I'll read the first. The
4 first stipulation, Number 1, it is hereby stipulated
5 by and between the parties:

6 After a jury trial in 1994, Herman Williams
7 was convicted of the September 1993 murder of Penny
8 Williams. The conviction was based upon evidence
9 which included serological blood testing,
10 time-of-death pathology, an alleged confession, and
11 testimony regarding the location of where
12 Ms. Williams' purse was found. The parties agree
13 that newly discovered material and noncumulative
14 evidence now exists which, if presented to a jury,
15 would be likely to change the result upon trial. The
16 parties also agree that Mr. Williams' constitutional
17 rights were violated when exculpatory evidence was
18 suppressed and by the State's use of false and
19 misleading evidence at trial. And as a result,
20 pursuant to 735 ILCS 5/2-1401, Mr. Williams'
21 conviction should be vacated.

22 The State does not oppose the relief
23 requested in the defendant's petition for relief of
24 judgment and to vacate conviction pursuant to

1 735 ILCS 5/2-1401. Furthermore, the parties agree
2 that Mr. Williams' petition meets the legal standard
3 for relief as detailed in the petition.

4 It is hereby agreed by the parties. This
5 is a stipulation signed by myself as well as
6 Ms. Kaeseberg and Ms. Potkin.

7 And we'd ask to enter that. Judge, I don't
8 know if it just makes more sense logistically to
9 enter them in the record after we've read them all
10 or --

11 THE COURT: That's fine.

12 MR. MALIA: Okay.

13 MS. POTKIN: With regard to Stipulation
14 Number 2, pertaining to the DNA evidence, it is
15 hereby stipulated by and between the parties:

16 At trial, evidence was presented that Penny
17 Williams died as the result of a close-range, violent
18 confrontation. Ms. Williams was beaten numerous
19 times with an object and had severe injuries on her
20 head and body. She had defensive wounds on her arms
21 indicative that she fought to defend herself from her
22 attacker. In an effort to recover biological
23 evidence to identify her assailant, fingernail
24 clippings were collected from each of Ms. Williams'

1 fingernails at autopsy. Given the limitations of the
2 DNA technology in use at the time of Ms. Williams'
3 trial -- Mr. Williams' trial, which required a larger
4 amount of biological evidence than is required today
5 to obtain a genetic profile, testing at the Northern
6 Illinois Police Crime Laboratory was inconclusive, a
7 fact stipulated to at trial.

8 At trial, in an effort to connect him to
9 the crime, the State presented testimony from several
10 forensic analysts regarding the collection and
11 testing of a small amount of blood recovered from
12 Mr. Williams' truck. While the Illinois State Police
13 was unable to do DNA typing on the blood evidence,
14 the laboratory was able to identify a blood type
15 through conventional serology. The jury was told
16 that based on ABO blood typing, the blood evidence
17 from Mr. Williams' vehicle revealed a blood type that
18 was the same as Penny Williams.

19 Since the time of trial, DNA technology has
20 become far more sensitive and discriminating than the
21 DQ Alpha DNA test and conventional serology that were
22 available at trial. The STR and Y-STR DNA test,
23 which targets male DNA, enabled the biological
24 evidence in this case to be successfully genetically

1 typed.

2 This Court granted Mr. Williams' unopposed
3 725 ILCS 116-3 motion for DNA testing. Based on
4 orders entered on March 2nd, 2016, and February 7th,
5 2019, testing in this case proceeded at Bode
6 Laboratory and Forensic Analytical Crime Laboratory,
7 FACL. FACL's final report was issued on March 8th,
8 2021.

9 If called to testify, Nancy Dinh, formerly
10 Nancy Wilson, would testify that she is a forensic
11 scientist with FACL who conducted DNA testing on the
12 blood evidence and fingernail evidence from this
13 case. The parties stipulate to Ms. Dinh's admission
14 as an expert in DNA testing and analysis.

15 Ms. Dinh would testify that she performed
16 Y-STR testing on the biological material collected
17 from Ms. Williams' fingernails at autopsy. That
18 testing revealed male DNA from under Ms. Williams'
19 fingernails. Ms. Dinh performed a comparison of
20 Herman Williams' DNA to the crime scene evidence.
21 The DNA test results conclusively eliminated Herman
22 Williams as a source of the male DNA obtained from
23 under Ms. Williams' fingernails.

24 The presence of male DNA under Penny

1 Williams' fingernails is probative scientific
2 evidence that someone other than Mr. Williams beat
3 and killed Penny Williams.

4 Further, Ms. Dinh would testify that she
5 conducted STR DNA testing of blood samples found in
6 Mr. Williams' truck which had been attributed to
7 Penny Williams at trial and used to link Mr. Williams
8 to the crime scene. DNA testing established that the
9 trace blood evidence from Mr. Williams' truck does
10 not belong to Penny Williams.

11 At trial, the State's theory was that
12 Ms. Williams discarded -- Mr. Williams discarded
13 Penny Williams' purse in a dumpster after committing
14 the crime.

15 Ms. Dinh would also testify that she
16 reviewed the Y-STR DNA results conducted by Bode
17 Laboratory on Penny Williams' purse and items within
18 the purse for touch or handler DNA. Such testing was
19 unavailable at the time of Mr. Williams' trial.
20 Ms. Dinh would testify that Bode identified a major
21 component of a partial Y-DNA profile from a swab of
22 the exterior of the checkbook from inside the purse.
23 That major component was suitable for comparison.
24 And when compared to Herman Williams' DNA profile,

1 Herman Williams is excluded as the source of that
2 male DNA.

3 The parties agree to enter into evidence
4 the report of FACL as Exhibit 1, the CV of Nancy Dinh
5 as Exhibit 2, and the report of Bode as Exhibit 3.

6 It is hereby agreed by the parties and
7 signed to by both the State and counsel for
8 Mr. Williams.

9 Stipulation 3, regarding time-of-death
10 pathology, it is hereby stipulated by and between the
11 parties:

12 At trial, Penny Williams' time of death was
13 a crucial component of the State's case.
14 Ms. Williams' body was found on the afternoon of
15 Sunday, September 26th, 1993. The State's theory
16 centered on Ms. Williams being killed the night of
17 Wednesday, September 22nd. The defense maintained
18 that Ms. Williams returned home Wednesday night, was
19 seen alive Thursday morning, and she was killed
20 sometime after that. Herman Williams' whereabouts
21 were essentially accounted for from the morning of
22 Thursday, September 23rd, until Ms. Williams' body
23 was recovered on Sunday, September 26th.

24 The State presented testimony from forensic

1 pathologist Dr. Nancy Jones who conducted the autopsy
2 on Ms. Williams on the evening of September 26th,
3 1993, the date her body was found. Dr. Jones
4 testified to a time of death in a very small window
5 of time that aligned with the State's theory.
6 Dr. Jones testified that to a reasonable degree of
7 medical certainty, Penny Williams' most probable time
8 of death was before midnight on Wednesday,
9 September 22nd, or 1:00 AM on Thursday,
10 September 23rd.

11 The parties would stipulate that Dr. Jones'
12 opinion that Ms. Williams' death occurred before
13 midnight on Wednesday, September 22nd, and no later
14 than 1:00 AM on Thursday, September 23rd, i.e., death
15 occurred 86 hours or greater from the discovery of
16 her body, is not scientifically supported.

17 The parties would stipulate to Dr. James
18 Filkins' admission as an expert in forensic pathology
19 before this Court. Dr. Filkins would testify that he
20 reviewed the autopsy evidence in this case and the
21 trial testimony of Dr. Jones. Dr. Filkins would
22 testify that there is no scientific basis to support
23 the narrow time-of-death window as testified to by
24 Dr. Jones.

1 Dr. Filkins would testify that based on
2 established principles of forensic pathology,
3 Ms. Williams' time of death likely occurred 24 to
4 36 hours prior to the recovery of her body. That
5 would put time of death most likely sometime on
6 Saturday, September 25th, 1993, a time at which
7 Mr. Williams' whereabouts were accounted for.

8 The parties agree that in 2022, the State
9 consulted expert Dr. Eimad Zakariya, a forensic
10 pathologist with the Lake County Coroner's Office.
11 Dr. Zakariya also reviewed the autopsy evidence in
12 this case and trial testimony of Dr. Jones and found
13 that the time-of-death testimony presented by the
14 State at Mr. Williams' trial is scientifically
15 unsupportable. He concluded that the more likely
16 timeframe of Ms. Williams' death is closer to when
17 her body was found on Sunday, September 26th, 1993.
18 Dr. Zakariya would testify that he could find, quote,
19 no scenario which would support Dr. Jones' opinion
20 regarding Ms. Williams' time of death.

21 The parties agree to enter into evidence
22 the report of Dr. Filkins, Exhibit 4, and the CV of
23 Dr. Filkins as Exhibit 5.

24 Related to time of death is Stipulation

1 Number 4, Brady violation. It is hereby stipulated
2 by and between the parties:

3 The parties agree and stipulate that the
4 State presented -- sorry -- the State suppressed
5 exculpatory evidence which was material to the
6 previously described crucial issue of Penny Williams'
7 time of death.

8 At Mr. Williams' trial, the State's
9 forensic pathologist, Dr. Nancy Jones, testified that
10 Penny Williams' time of death was prior to 1:00 AM on
11 Thursday, September 23rd. The State argued to the
12 jury that Dr. Jones, quote, didn't waver from her
13 estimate of time, unquote. Dr. Jones testified on
14 cross-examination that her time-of-death estimate was
15 limited to, quote, Wednesday or going into early
16 Thursday morning, but I did explain that by early, I
17 mean in the wee hours of the morning, midnight to
18 one, that range, end quote.

19 However, the State possessed but failed to
20 disclose Dr. Jones' initial time-of-death
21 determination that was inclusive of Friday morning,
22 September 24th. Dr. Jones' expert opinion was
23 conveyed to lead trial counsel, Assistant State's
24 Attorney Michael Mermel, and was documented in a

1 pretrial December 3rd, 1993, interoffice
2 correspondence between ASA Mermel and second chair,
3 ASA Robin Goodstein.

4 A 2021 review of work product in the
5 State's attorney's file revealed the December 3rd,
6 1993, interoffice memo. This memo was not disclosed
7 to the defense counsel prior to Mr. Williams' trial.

8 Dr. Jones' suppressed expert opinion that
9 Ms. Williams' likely time of death included Thursday
10 and the early morning hours of Friday was material to
11 the defense as it included timeframes that eliminated
12 Mr. Williams as a suspect and was consistent with the
13 defense theory that Ms. Williams was alive and home
14 on Wednesday night and went missing and was killed
15 sometime after she left home on the morning of
16 Thursday, September 23rd. Dr. Jones' expert opinion
17 extending time of death to Thursday into Friday
18 morning greatly reduced, if not eliminated,
19 Mr. Williams' opportunity to commit the crime.
20 Herman Williams' whereabouts were essentially
21 accounted for from the morning of Thursday,
22 September 23rd, until Ms. Williams' body was
23 recovered on Sunday, September 26th.

24 The parties agree to enter into evidence a

1 copy of the December 3rd, 1993, interoffice memo note
2 as Exhibit 7.

3 MS. KAESEBERG: Stipulation 5, relating to the
4 confession, it is hereby stipulated by and between
5 the parties:

6 At Mr. Williams' trial, the State presented
7 testimony from then-Detective Lou Tessman, deputy
8 commander of the Lake County Major Crimes Task Force
9 and a lead investigator on this case. Detective
10 Tessman testified that on September 30th, 1993,
11 during a custodial interrogation, Mr. Williams
12 confessed to him to murdering Penny Williams by
13 crying; nodding his head affirmatively to specific
14 questions about the murder; and stating, quote, I
15 know what I did was wrong, and I am sorry for what
16 happened, end quote. At trial, Tessman testified he
17 remembered the specific words of his questions and
18 Mr. Williams' answers despite having not taken any
19 contemporaneous notes and having no audio or video
20 recording of the interrogation. Detective Tessman's
21 report detailing the alleged confession was not typed
22 up until almost two weeks after the purported
23 interview.

24 Herman Williams testified at trial that he

1 never confessed to Detective Tessman, neither through
2 words nor head nods. To the contrary, Mr. Williams
3 testified that he invoked his right to counsel and
4 would not speak to Detective Tessman.

5 The parties would stipulate that at a
6 pretrial proceeding, the coroner's inquest, the
7 commander of the Lake County Major Crimes Task Force,
8 Chuck Fagan, testified under oath that, quote, the
9 members of the Lake County Major Crimes Task Force
10 never had an opportunity to interview Mr. Williams;
11 originally, when he reported this disappearance to
12 the Gurnee Police Department, for some period of
13 time, in parenthesis, on Friday, September 24th,
14 they questioned him, and he denied any involvement in
15 her disappearance, and subsequent to their interview,
16 he retained an attorney, and we had no further
17 conversation with Mr. Williams in regards to the
18 disappearance of his ex-wife, end quote.

19 The parties would further stipulate that
20 then-State's Attorney Michael Waller publicly stated
21 that Mr. Williams did not speak to the police or give
22 a statement after his arrest. In a Chicago Tribune
23 article from October 1st, 1993, the day after
24 Tessman's purported interrogation, State's Attorney

1 Waller stated that, quote, the suspect made no
2 statement to authorities about his former wife's
3 death after his arrest, end quote.

4 The parties agree and would stipulate that
5 since the time of Mr. Williams' trial, it has come to
6 light that Detective Tessman has engaged in a pattern
7 of misconduct by giving false testimony under oath
8 related to the circumstances of custodial
9 interrogations and manufacturing confession evidence
10 in other cases.

11 These cases include the case of Jason
12 Strong, who was similarly convicted and later
13 exonerated based on erroneous time-of-death testimony
14 and a purported confession by Detective Tessman.

15 In addition, in the case of Juan Rivera,
16 who was ultimately exonerated, Detective Tessman
17 testified in a similar fashion to what we now know
18 was a false confession.

19 At the time of trial, when the jury weighed
20 the credibility of Mr. Williams' denials against
21 Detective Tessman's testimony that Mr. Williams had
22 confessed, it did so unaware of the pattern and
23 practice of misconduct in which Tessman has engaged.
24 This history includes involvement in securing false

1 confessions and false testimony about the
2 circumstances of custodial interrogations that he
3 conducted and purported admissions he claimed were
4 made by suspects who turned out to be innocent.

5 The parties agree there exists substantial,
6 newly discovered evidence of police misconduct that
7 resulted in Mr. Williams' unconstitutional
8 conviction.

9 It is hereby agreed by the parties and
10 signed by both parties.

11 Stipulation Number 6, regarding Penny
12 Williams' shirt, it is hereby stipulated by and
13 between the parties:

14 The time of Penny Williams' disappearance
15 and death was a significant issue at trial. The
16 State maintained that Penny Williams was killed
17 between approximately 8:00 PM and 9:00 PM on
18 September 22nd, 1993, after she left out of her
19 apartment complex with Mr. Williams. The defense
20 maintained that Ms. Williams returned home Wednesday
21 night, September 22nd, and went missing Thursday,
22 September 23rd.

23 At the time of Mr. Williams' trial,
24 witnesses told police that when Penny Williams left

1 her apartment complex on the night of Wednesday,
2 September 22nd, she was wearing a blue and
3 white-striped, button-down, men's-style shirt. The
4 evidence at trial showed that when her body was
5 recovered, Ms. Williams was wearing a different
6 floral-style dress shirt.

7 At trial, the defense argued to the jury
8 that the fact that Ms. Williams was found in a floral
9 shirt as opposed to the striped shirt undermined the
10 State's theory that she was killed on Wednesday
11 night, September 22nd, within an hour of leaving her
12 apartment complex and supported the fact that she had
13 returned home on Wednesday night, September 22nd, and
14 that she did not actually go missing until Thursday,
15 September 23rd.

16 The State argued to the jury that
17 Ms. Williams may have been wearing two button-down
18 shirts on Wednesday night when she was killed and
19 that the assailant may have disposed of the striped
20 shirt which had never been located and was
21 unaccounted for. This was an effort to account for
22 the witness accounts of her wearing a striped shirt
23 when she was seen leaving the apartment the night of
24 Wednesday, September 22nd, although she was found in

1 a different floral shirt.

2 In fact, the police retrieved a blue and
3 white-striped, button-down shirt during a
4 September 24th search of Penny Williams' apartment.
5 The shirt was in police evidence at the time of the
6 trial where it remains to this day.

7 The State presented false evidence and
8 misleading arguments to the jury on this issue.

9 It is hereby agreed by the parties and
10 signed by both parties.

11 Stipulation 7, Penny Williams' purse, it is
12 hereby stipulated by and between the parties:

13 During the investigation of this case, a
14 purse belonging to Penny Williams was turned into
15 authorities by an individual later identified as
16 Jimmy Correa. Mr. Correa, C-O-R-R-E-A, indicated
17 that it had been found in a trash can at a car wash
18 in Park City, Illinois. Further investigation would
19 reveal that it had been found by Mr. Correa's
20 brother-in-law, Leo Arispe, A-R-I-S-P-E. As the
21 State alluded to during the trial and as was made
22 clear by his testimony, Mr. Arispe suffers from an
23 intellectual or cognitive disability. Through the
24 course of the investigation, the location changed as

1 to where the purse was alleged to have been found.
2 By the time of trial, the State represented that the
3 purse was found in a dumpster outside of the nearby
4 apartment building where Katherine Williams,
5 Mr. Williams' then-current wife from whom he was
6 separated, lived.

7 At trial, evidence regarding the purse was
8 introduced by the State through testimony,
9 stipulations, and a video. Leo Arispe's testimony
10 included the following: He stated that he did not
11 remember where he lived; when asked what time he
12 found the purse, he said, quote, four, twelve, end
13 quote, as he held up two fingers; he did not remember
14 what day he found it; he found it in a garbage can;
15 and that ASA Mermel told him, Arispe, where and in
16 what dumpster he, Arispe, had found the purse. The
17 Court stopped Mr. Arispe's testimony during
18 cross-examination and told defense counsel he could
19 recall Mr. Arispe to complete cross at such time as
20 he obtained a Spanish-speaking interpreter. However,
21 defense counsel failed to recall Mr. Arispe to
22 complete his cross-examination. And then for reasons
23 not put on the record, defense counsel agreed to
24 stipulate to the purse being found at a time and

1 place that was disputed and which supported the
2 State's theory.

3 The State also presented testimony from
4 Jimmy Correa who testified on direct to questions
5 from ASA Mermel that he, Correa, did not make any
6 statements to law enforcement as to where he thought
7 the purse had been found. That testimony contradicts
8 the police reports which demonstrate that Correa told
9 law enforcement that the purse had been found in a
10 garbage can at the car wash. Defense counsel did not
11 cross-examine Correa.

12 The State played for the jury an edited
13 video of Mr. Arispe pointing at a dumpster outside of
14 the apartment building of Katherine Williams. This
15 video was filmed on February 7th, 1994, one week
16 before the start of trial, and obtained at the
17 request of ASA Mermel who accompanied an investigator
18 from the State's Attorney's Office, Dennis Pensala,
19 P-E-N-S-A-L-A, who recorded it. The video starts out
20 with Mr. Arispe already standing in front of an open
21 dumpster pointing his finger down to the dumpster
22 opening. It then cuts to edited scenes of the area
23 surrounding the building and parking lots. The video
24 has no sound. Investigator Pensala testified on

1 direct questioning from ASA Mermel that neither he,
2 Pensala, nor ASA Mermel knew the location of the
3 dumpster when they went to film the video, giving the
4 impression that Mr. Arispe directed them there.
5 However, this is contradicted by police reports which
6 both Pensala and Mermel had access to at the time
7 which did contain the location. Defense counsel did
8 not cross-examine Pensala.

9 The defense called as a witness David
10 Wright, W-R-I-G-H-T, who was a garbage truck driver
11 who gave a window of time of garbage pickup that left
12 some room for debate about whether the purse was
13 possibly placed in the dumpster sometime after
14 garbage pickup on Thursday which would have supported
15 the defense theory. However, defense counsel later
16 stipulated to testimony from Olga Wengel,
17 W-E-N-G-E-L, the sister of Mr. Arispe, which agreed
18 to a disputed fact about when she was tendered the
19 purse. The stipulation put it at about noon on
20 Thursday which supported the State's theory.

21 The stipulations and testimony were a main
22 part of the State's closing arguments to the jury.

23 With regard to this evidence, Mr. Williams'
24 rights to due process, effective assistance of

1 counsel, and confrontation were violated.

2 It is hereby agreed by the parties and
3 signed by the parties.

4 And, your Honor, that completes the
5 stipulations. We would rest on our petition, which
6 is rather lengthy.

7 If I may just read into the record very
8 briefly some very short just statements of law to put
9 them into the record? So a new trial must be granted
10 if petitioner proves by a preponderance of the
11 evidence that he has new, material, noncumulative
12 evidence of such a conclusive nature that it would
13 probably change the result on retrial. And that is
14 from People vs. Waters, citing to People vs.
15 Washington.

16 The trial court must consider -- this is a
17 quote -- whether the new evidence placed the evidence
18 presented at trial in a different light and undercuts
19 the Court's confidence in the factual correctness of
20 the guilty verdict, end quote.

21 Quote, the trial court should not re-decide
22 the defendant's guilt in deciding whether to grant
23 relief, end quote. And that is from People vs.
24 Molstad, M-O-L-S-T-A-D.

1 We would also -- we rely on Brady in this
2 petition as well. And to establish a Brady
3 violation, a defendant must show that, one, the
4 prosecution suppressed evidence, whether willfully or
5 inadvertently; two, the evidence was favorable to the
6 accused because it is exculpatory or impeaching; and,
7 three, the suppressed evidence was material to an
8 issue at trial. And that cites to People vs. Beaman,
9 State vs. McNeil, and Strickler on the Brady issue.

10 In addition, there is false testimony in
11 this case. And, quote, a conviction obtained by the
12 knowing use of perjured testimony must be set aside
13 if there is any reasonable likelihood that the
14 false testimony could have affected the jury's
15 verdict, citing to People vs. Olinger, citing United
16 States vs. Bagley.

17 And ineffectiveness in this case, in the
18 petition we go through the legal standard for that
19 which is, you know, based on Strickland vs.
20 Washington, where counsel's representation falls
21 below an objective standard of reasonableness and the
22 defendant suffers prejudice as a result. That's a
23 constitutional violation worthy of a new trial.

24 And finally, the petition ends with an

1 argument that the cumulative errors in this case
2 should result in a new trial. And the Illinois
3 Supreme Court has clearly held that these cumulative
4 errors can deprive a defendant of due process and
5 should be remedied by vacating the conviction and
6 sentence. And that is a cite to People vs. Blue.

7 And other than that, we would rest on our
8 rather lengthy petition before the Court. We
9 prepared an agreed order, and we would implore your
10 Honor to consider ruling today and signing that
11 agreed order today.

12 THE COURT: State?

13 MR. MALIA: Judge, we don't have any additional
14 argument. As stated previously, we do feel that the
15 defendant has met the standard required in his
16 petition for relief based on 735 ILCS 5/2-1401 based
17 on the stipulations entered into the record.

18 Your Honor, we concede that, obviously, as
19 we had stated, that there has been a Brady violation
20 and all the number of issues that the defense has
21 raised both in their petition and obviously through
22 their stipulations and argument today. So we would
23 ask that the Court grant the relief requested by the
24 defendant today.

1 THE COURT: Thank you.

2 I have read and reviewed the petition for
3 relief from judgment. I have carefully considered
4 the factual underpinnings for that document. I've
5 certainly paid attention carefully to what you've
6 read here today. And thank you for providing that to
7 me in advance which allowed me the opportunity to go
8 through it before these proceedings.

9 And after having read and reviewed all this
10 material, considering the fact that the State is not
11 opposed to it and is, in fact, stipulating to the
12 factual basis for all of the relief that was sought,
13 I find that there is a sufficient factual basis and a
14 sufficient legal basis at law to grant the relief
15 sought. And I will do so today.

16 Parties can provide me a copy of the order.
17 I'm happy to sign that after I review it.

18 MR. MALIA: Judge, the only other thing that we
19 would put on the record, obviously the defendant
20 today is -- the relief being sought is a vacation of
21 the conviction --

22 THE COURT: Yes.

23 MR. MALIA: -- which the Court is granting. We
24 would put on the record that, based on the issues

1 that have come up through the further investigation
2 of this case, the stipulations entered into the
3 record, specifically all of the new evidence, the DNA
4 evidence, I would say specifically also the new
5 forensic pathology evidence, and obviously the length
6 of time that has elapsed since the date of offense,
7 that the State does not feel we can move forward on a
8 new trial or prove this case beyond a reasonable
9 doubt. So we are seeking leave to nolle pros the
10 case today as well.

11 THE COURT: That will be allowed. That's within
12 your discretion.

13 All right. Thank you.

14 MR. MALIA: Thank you, your Honor.

15 THE COURT: End of record.

16 (End of proceedings.)

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
LAKE COUNTY

I, MAGGIE R. GILBERT, CSR (084-004850), an
Official Court Reporter for the Circuit Court of
Lake County, 19th Judicial Circuit of Illinois,
reported in machine shorthand the proceedings had
in the hearing in the above-entitled cause and
transcribed the same by Computer-Aided Transcription,
which I hereby certify to be a true and accurate
transcript of the proceedings had before the
Honorable Mark L. Levitt.



Official Court Reporter

Dated: This 31st day of July, 2023